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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,244	04/06/2004	Rainer Herrmann	GMH/416/US	7479
2543	7590	06/24/2005	EXAMINER	
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			NGHIEM, MICHAEL P	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/820,244

Applicant(s)

HERRMANN ET AL.

Examiner

Michael P. Nghiem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 and 17 is/are rejected.
- 7) ☒ Claim(s) 1-7, 9-16 and 18-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4-6-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

"Comprising" (line 3) is an improper legal phraseology.

The disclosure is objected to because of the following informalities: "substances 18" (page 13, line 2) should be -- substances 5 --.

Appropriate correction is required.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

- the claim lacks a transitional phrase.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Kraszewski et al. (US 5,554,935).

Regarding claim 8, Kraszewski et al. discloses an apparatus (Fig. 1) for determining the mass of portioned units of active substances (Abstract, lines 1-2), in particular capsules, tablets or dragees (3), which comprises a microwave generator (column 4, lines 21-22), a microwave resonator (10), a device for guiding the units of active substances through the microwave resonator (column 4, line 22), measuring and evaluation electronics (column 4, line 23) for determining the mass (Abstract, lines 1-2) from the displacement A of the resonant frequency (displacement between 1 and 2, Fig. 4a) and the broadening B of the resonance curve (left curve is broader than right curve, Fig. 4a), and a device for removing individual units of active substances (means for separating, column 3, line 65 – column 4, line 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraszewski et al. in view of Mayer et al. (US 5,602,485).

Kraszewski et al. further discloses that the devices for guiding the units of active substances have a tube (5) through which the units of active substances are conveyed (Fig. 2).

However, Kraszewski et al. does not disclose that the units of active substances are conveyed by an air stream.

Nevertheless, Mayer et al. discloses that the units of active substances (14's) are conveyed by an air stream (Fig. 1) for the purpose of processing the capsules at a high rate of speed (column 1, lines 32-35).

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Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Kraszewski et al. with a conveying air stream as disclosed by Mayer et al. for the purpose of processing the capsules at a high rate of speed.

### ***Allowable Subject Matter***

Claims 13, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-7, 9-12, 14-16, and 20 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action.

### ***Reasons For Allowance***

The **combination** as claimed wherein the mass M is determined, with compensation of the influence of the moisture (claim 1) or a second microwave resonator with measuring and evaluation electronics for determining the mass of the units of active substances before filling (claim 13) or the devices for guiding the units of active substances have an endless belt with depressions, into which the units of active substances are inserted (claim 18) the devices for guiding the units of active substances

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have a circular disk, on the circumference of which the units of active substances are held firmly with the aid of vacuum (claim 19) is not disclosed, suggested, or made obvious by the prior art of record.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-H.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MICHAEL NGHIEM  
PRIMARY EXAMINER**

Michael Nghiem

June 22, 2005